

UTAH ASSOCIATION OF COUNTIES INSURANCE MUTUAL

Board of Directors Meeting

December 21, 1995, 9:00 a.m.

Utah Association of Counties Offices

4021 South 700 East, Suite 180, Salt Lake City, Utah

801-265-1331

A G E N D A

9:00	Call to Order	Gary Herbert
	Review of Board Members Absent	Gary Herbert
	Approval of November 8 and November 30, 1995 Minutes	Gary Herbert
	Officers Elected by Trustees	Board of Directors
	Audit Committee Requirement	Brett Rich
	Director's Report	Brett Rich
	Use of Defense Counsel Prior to Claim	Gerald Hess Brett Rich
	Beaver County Claim #801BEA957002	Brett Rich
	Re-Negotiate Debenture Loans (1% over STGF)	Board of Directors
	Summary of Financial Statements	Brett Rich
	1996 Budget(s)	Board of Directors
12:00	Lunch Break	
	Brokers Report	Jess Hurtado Keri Chappell
	Review of Loss Prevention Report	Board of Directors
	Reinsurance Captive Feasibility Study and Benchmark Study	Brent Gardner
	Board Policy on County Employees with Bad Driving Records	Brett Rich
	Litigation Management Committee and Claims Report	Kent Sundberg Doug Alexander
2:00	Adjourn	



UTAH ASSOCIATION
OF COUNTIES
INSURANCE MUTUAL

UTAH ASSOCIATION OF COUNTIES INSURANCE MUTUAL MINUTES, BOARD OF DIRECTORS MEETING

December 21, 1995, 9:00 a.m.
UAC Offices

Board Members Present:

Gary Herbert, *President*, Utah County Commissioner
Gerald Hess, *Vice President*, Davis County Deputy Attorney
Dennis Ewing, *Comptroller*, Tooele County Clerk
Robert Gardner, *Secretary*, Iron County Commissioner
Ken Brown, Rich County Commissioner
Sid Groll, Cache County Sheriff
Ty Lewis, San Juan County Commissioner
Gary Sullivan, Beaver County Commissioner

Board Members Absent:

Sarah Ann Skanchy, Cache County Council Member

Others Present:

Kent Sundberg, Utah County Deputy Attorney
Brett Rich, Director, UACIM
Brent Gardner, UACIM Administrator
Sonya White, UACIM Administrative Assistant
Jess Hurtado, UACIM Broker
Keri Chappell, UACIM Broker
Doug Alexander, UACIM Claims Manager

CALL TO ORDER

President, Gary Herbert, called the meeting to order and welcomed those in attendance.

REVIEW OF BOARD MEMBERS ABSENT

Sarah Ann Skanchy requested that the Board excuse her from this meeting due to holiday plans out of town. Ken made a motion to excuse Sarah Ann from this meeting. Robert seconded the motion and the motion carried.

REVIEW AND APPROVAL OF NOVEMBER 1995 MINUTES

The minutes from the November 8 and the November 30, 1995, Board meeting and telephonic conference were previously sent and reviewed by the Board. Ty made a motion to approve the minutes as written. Sid seconded the motion and the motion carried.

OFFICERS ELECTED BY TRUSTEES

Pursuant to Article 7 of the UACIM Bylaws, *Officers shall be elected by and from among the Trustees, at the first Board meeting following each annual meeting of the members.* Therefore, Gary Sullivan made a motion to elect Gary Herbert as President, Gerald Hess as Vice President and Robert Gardner as Secretary. Sid seconded the motion and the motion carried. Ken made a motion to elect Sid Groll as Comptroller of UACIM. Ty seconded the motion and the motion carried. Pursuant to Article 6-6.6, *Any vacancy in the position of Trustee may be filled by majority vote of the remaining Trustees until the next annual meeting of the members, at which time the members shall elect a person to fill the vacancy for the unexpired term.* Therefore, upon discussion, Ty made a motion to contact Curtis Dastруп, Duchesne County Commissioner; Michael Spanos, Wasatch County Sheriff; Steven Wall, Sevier County Clerk-Auditor; and Lee Allen, Box Elder County Commissioner, to explain the duties of the Board and if they would be interested in this appointment. A vote will be taken at the next meeting. Ken seconded the motion and the motion carried.

Brett read aloud the following draft of a proposed policy clarification: *A resolution of the Utah Association of Counties Insurance Mutual adopting a policy concerning the investigation, settlement and litigation of claims. Whereas the Utah Association of Counties Insurance Mutual (hereinafter referred to as UACIM) by and through its Board of Directors has deemed it appropriate to clarify the policy of UACIM concerning the investigation, settlement and litigation of claims. Now therefore, the policy of UACIM concerning such practices is as follows: UACIM shall retain the rights of investigation, settlement and litigation of all claims and may deny coverage for any claims settled or for any monies paid towards claims without the prior written approval of UACIM.* Sid made a motion for Brett to review this proposed policy language with the LMC for recommendation to the Board. Robert seconded the motion and the motion carried.

RE-NEGOTIATE DEBENTURE LOANS (1% OVER STGF)

Brett explained that the Board had discussed the possibility of re-negotiating the interest rate on the debenture loan agreements by paying the State Treasurers Fund interest rate rather than 1% over that rate. Ty suggested a trade-off with those counties that in the event of insolvency, a priority for re-payment (after all claims are paid) would be offered to those counties. Robert made a motion for Brett to draft a proposed policy for the LMC to review and make a recommendation to the Board. Ken seconded the motion and the motion carried.

SUMMARY OF SEPTEMBER & OCTOBER FINANCIAL STATEMENTS

The financial statements for the months ending September and October were previously sent to the Board Members for review. Brett explained that he has reviewed each monthly financial statement since the inception of UACIM and charted what the total incurred has been month by month. Brett prepared line charts to track the total incurred by policy year. The total incurred for November 1995 looks better than past years but UACIM will continue to receive 1995 claims into 1996. Brett also reviewed a chart comparing total incurred, loss fund and attachment point, expressing that UACIM must control losses and fund the loss fund to the amount the losses are projected. The Board agreed that the charts were useful in tracking these trends.

Brett explained Incurred But Not Reported claims (IBNR's). Each year the actuaries project the UACIM losses. The projected losses are approved by the Board which is used as the number on the UACIM budget and is the number that will be listed on the monthly financial statements for that year. At the end of the year, the losses will normally equal exactly the number approved. IBNR is established by taking the UACIM "loss pick" and subtracting the UACIM paid losses and loss reserves. The difference being the UACIM IBNR number listed on the financial statements. At the end of this month, the financial statement will show \$1.5 million in losses even though the total incurred is \$434,000. This loss number also determines the UACIM total surplus on the financial statements. If the actual losses are lower, then UACIM has the potential to put IBNR's back into surplus. Brett explained *Unallocated Loss Adjustment Expense*, a 1994 Government Accounting Board requirement which is listed on the financial statements under IBNR for 1993 and 1994. Although UACIM has reached the attachment point for those years, UACIM is required to reserve money for adjusting losses in the future. This expense also comes out of the UACIM surplus.

1996 BUDGET

Pursuant to the telephonic conference on November 30, Brett reported that \$2,074,000 is the loss projection for 1996 determined by AON actuaries (this amount included Tooele County). The Board has the option of approving the loss pick, therefore, Brett had recommended a second opinion by Coopers & Lybrand—the Board agreed. Coopers & Lybrand projected losses for 1996 at \$2,024,000 (not including Tooele County) with an acceptable range of plus or minus 10%. The Board directed Jess to negotiate with AON to see if they would also include an acceptable range of plus or minus 10%. With a telephone call to the actuaries, Jess asked them if a range of plus or minus 10% was acceptable but did not receive an answer by the end of the Board meeting.

AUDIT COMMITTEE REQUIREMENT

Pursuant to Article 8-8.3(h), *The Board shall appoint an Audit Committee, as required in UT Code Ann. §31A-5-412.* Ken made a motion to appoint Gerald Hess as Chairman, Sid Groll and Ty Lewis as Members of the Audit Committee which will hold their first meeting the morning before the next scheduled Board meeting. Robert seconded the motion and the motion carried.

DIRECTOR'S REPORT

Brett reported that he, Jess and Keri met in length with the Duchesne County Commissioners regarding the release forms and their premium contribution. Brett felt that all the Commission's questions were answered and that the discussions were beneficial and understood.

Brett reported that he had spoke with Lynn Lund who assured him that he has not contacted anyone from Millard County since his initial visit (at the request of UACIM). Lynn said that several county officials had contacted him regarding this case. Brett followed-up this conversation with a letter to Lynn advising him that he had gone to Millard County representing UACIM and that he was no longer representing UACIM in this matter. The Board requested that Lynn Lund be removed from the list of approved defense counsel for any new cases.

Brett explained that Daggett County's anniversary, for their insurance coverage, is October. This month had already past when negotiations were ongoing to join UACIM. Daggett County has decided to stay with their present carrier at this time to avoid a cancellation penalty. Morgan County has also decided to stay with their present carrier due to a 10% penalty if they cancel their policy at this time. Their property coverage anniversary is July and their liability coverage anniversary is November.

Brett reviewed two pie charts with the Board showing the loss fund, surplus, excess reinsurance, administrative expense and claims administration percentages for 1996. These charts are based on premium contributions and how they are allocated. Brett will continue to work on reducing the expenses of UACIM and continue negotiations with non-member counties to join UACIM. These efforts will benefit the financial standing of UACIM. The Board discussed pursuing additional lines of coverage. Ken made a motion for Brett to research the feasibility of wildland fire suppression, search & rescue, boiler & machinery, public officials bonds, special service districts, etc., and if these types of coverage would fit into the structure of UACIM. Dennis seconded the motion and the motion carried.

DEFENSE COUNSEL PROPOSAL

The Board had previously reviewed the proposed Defense Counsel Prior to Claim policy. Gerald was concerned who the defense counsel would be representing—the County or UACIM. Kent explained that the Litigation Management Committee so structured the proposed policy that counsel would be working for UACIM in an advisory/consulting capacity so that UACIM would have more control over this service. Ty made a motion to approve the policy as written. Dennis seconded the motion and the motion carried. One dissenting vote by Gerald.

BEAVER COUNTY CLAIM #801BEA957002

Brett explained that pursuant to the October 19, 1995, Board meeting, he met with Doug and Jess to resolve this matter. Article 11-11.1(f) of the UACIM Bylaws state that, *Members shall have the obligation to allow the Mutual, and attorneys and others designated by the Mutual, to represent the member in the investigation, settlement and litigation of any claim within the scope of loss protection furnished by or through the Mutual.* "Shall" could be interpreted as UACIM may have the right to represent the member. Doug's opinion was that UACIM could pay the appraised value of the car—\$1650—up to an additional \$500 and stay within the scrutiny of the Insurance Department with the adoption of a policy to clarify Article 11-11.1(f). Brett informed Beaver County of this decision and the County faxed a copy of the waiver/release to Doug. Ken made a motion to ratify the decision to pay \$2150 in settlement of claim #801BEA957002. Dennis seconded the motion and the motion carried.

Brett reviewed two preliminary 1996 UACIM budget report comparisons. One assuming projected losses of \$2,074,000 and the other assuming losses at \$1,800,000. The budget must comply with an actuarial projection.

Brent reviewed the proposed 1996 UACIM Administrative Budget at \$260,000, the same amount approved by the Board in 1995. Brent reviewed the 1994 actual and 1995 actual (as of 8/31/95) by line item with the Board. More was spent in some items than budgeted and less in others, therefore, Brent was able to adjust the line item amounts without increasing the total budget. The total Administration expense was not used in 1994 or 1995 because Brett was not hired until mid-year. The UACIM Board has the option of meeting with the UAC Board to request a refund or credit of any monies not utilized. Brent will calculate the amounts and report back to the Board. Finally, Brent recommended to the Board the purchase of a vehicle for Brett.

Ty made a motion to approve the Administrative Budget at \$260,000 with the discussed adjustments to the line items. Ken seconded the motion and the motion carried. Ken made a motion to approve the purchase of a vehicle for Brett up to an amount of \$15,000. Dennis seconded the motion and the motion carried. Ty made a motion to approve the 1996 UACIM budget using the lowest actuarial loss pick. Dennis seconded the motion and the motion carried. The Board requested that the finalized budget be faxed to them and if there are no other concerns, the budget will be sent to the members.

REINSURANCE CAPTIVE FEASIBILITY STUDY AND BENCHMARK STUDY

Brent explained that for the last four or five years the state associations that have insurance programs have been meeting to share ideas and concerns. In one of these meetings the idea of pooling for reinsurance was discussed. Large companies were asked to make a proposal on the feasibility of a reinsurance pool for county associations. These companies agreed that it would be feasible and a committee was selected to write an RFP and hire someone to do an actual feasibility study. ARM Tech was selected to do this study and each state has been asked to contribute \$4000 to fund the study. Brent has been heavily involved and feels this will be very advantageous especially in marketing this coverage to the larger Utah counties—Salt Lake and Weber. Ty made a motion that due to budget constraints, UACIM will donate \$1000 towards the study from the monies not utilized in the administrative budget for 1995. Robert seconded the motion and the motion carried.

BROKERS REPORT

Jess reported that he went to several markets to bid the property renewal for UACIM. Some of the companies declined to bid because the St. Paul rates are so low. St. Paul is giving UACIM the same rates, terms and conditions as previous years. The liability renewal also went out to several markets to bid. National Union has not changed their rates since 1992 so Jess was unable to find a more competitive premium. The UACIM member counties' property and revenue has increased considerably, therefore the premiums have increased. National Union approached Jess with a new General Liability policy form. UACIM does not have to use this form but most of the pools covered by National Union are switching to this form. Under the manuscript form UACIM now is using, Jess has been debating with the underwriters the issue of sexual molestation. Sexual molestation is covered under the new form, that is if the Commission is named in a claim but the act occurred in another department. Dennis made a motion for Brett, Gerald and Kent to review the policy forms and make a recommendation to the Board as to which form UACIM should use. Sid seconded the motion and the motion carried.

Keri has been working on pollution liability coverage for quite some time and brought two quotes for the Board to review today. The premiums per county were listed with either a \$500,000 limit or \$1,000,000 limit. The policy includes all county spraying (with the exception of aerial spraying), underground tanks and above ground tanks. This will be a county voluntary program and the premiums listed are based on 2/3 participation.

Keri reviewed two quotes for Trustees Errors and Omissions Insurance Association Directors and Officers Liability coverage. Pacific Insurance Company works with the school districts and feels this policy will be a good fit for the counties. Keri has requested that both Pacific Insurance and National Union combine the risk of UAC, UACIM and MCAT to reduce the premium amount. These companies will pick up Brett's exposure to provide legal council to the counties. The UACIM E&O insurance covers potential exposure for county officials and D&O covers the Board of Directors but not UACIM staff. Keri recommended that the Board may want to use Pacific Insurance Company for this coverage because of its broad form. \$10,000 was added to the 1996 UACIM budget for this coverage. Robert made a motion authorizing the purchase of the Pacific Insurance Company E&O and D&O coverage as long as the budget allows. Sid seconded the motion and the motion carried.

LITIGATION MANAGEMENT COMMITTEE AND CLAIMS REPORT

Dennis made a motion for the Board to go into executive session to discuss the LMC and claims report. Gary Sullivan seconded the motion and the motion carried.

Sid made a motion for the Board to come out of executive session. Dennis seconded the motion and the motion carried.

Dennis made a motion to authorize settlement up to the amount of \$45,000 for claim number 801UIN94702301. Robert seconded the motion and motion carried.

Gerald made a motion to authorize settlement up to the amount of \$50,000 for both claim numbers 801CAC937010 and 801CAC93701001. Gary Sullivan seconded the motion and the motion carried.

Robert made a motion to notify the member county that UACIM is formally withdrawing defense and coverage (as of the date of entry of the order of summary judgment) on claim number 801WAS927004. Dennis seconded the motion and the motion carried. One dissenting vote by Ty.

REVIEW OF LOSS PREVENTION REPORT

David asked to be excused from this meeting but prepared his written report for the Board to review. The Board requested that David present this report at the next meeting.

BOARD POLICY ON COUNTY EMPLOYEES WITH BAD DRIVING RECORDS

A copy of Brett's proposed policy was given to the Board. The Board will review this policy and discuss at the next meeting.

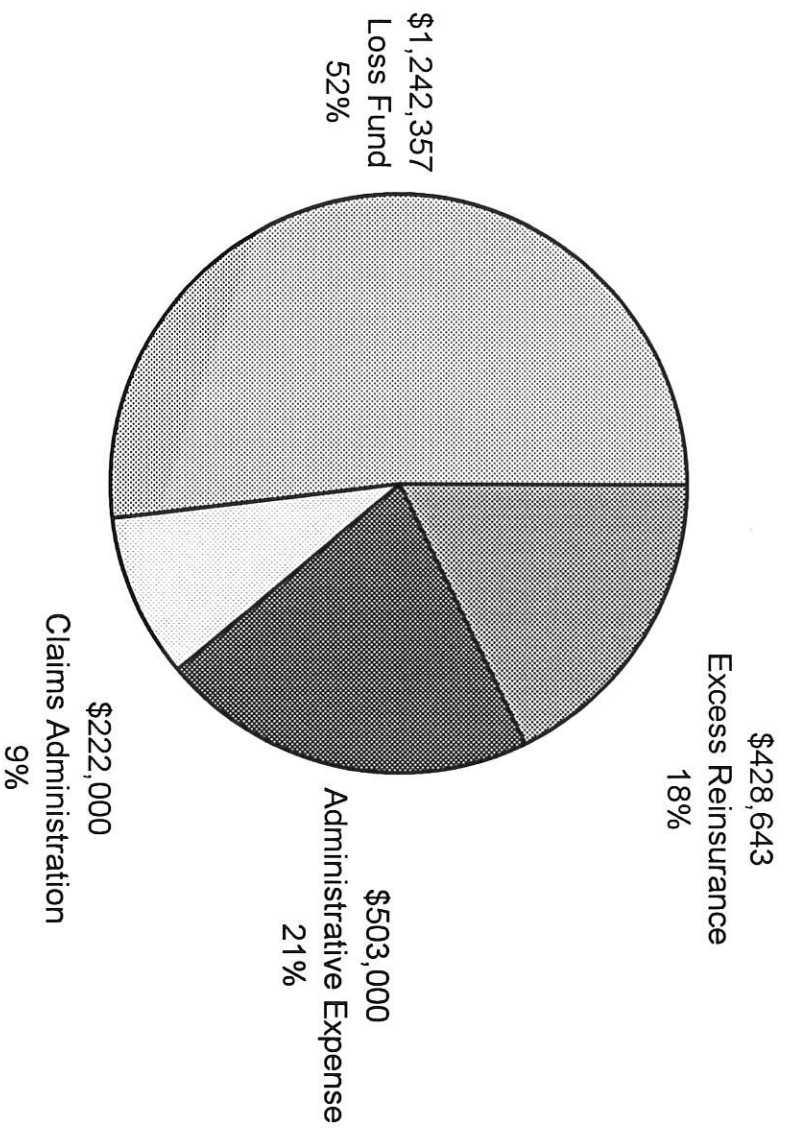
OTHER BUISNESS

Dennis explained the withdraw of Tooele County from UACIM. The Board Members and staff thanked Dennis for his dedication and loyalty to UACIM.

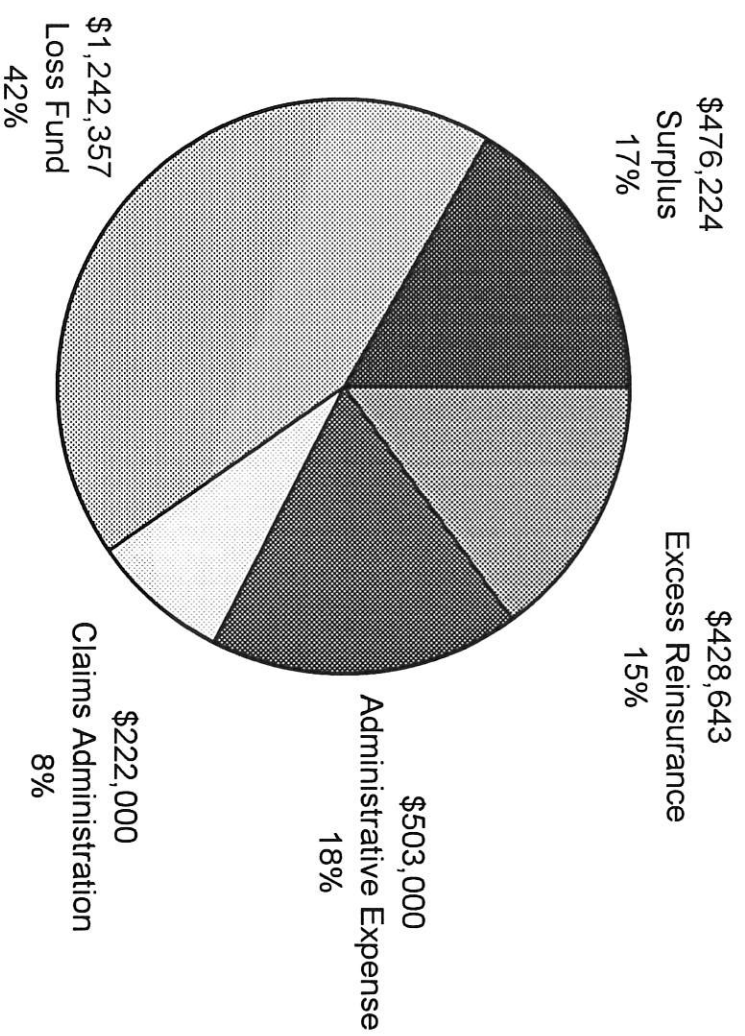
Brett reported that the Market Conduct Report by the Insurance Department is complete. There are requirements in the report that UACIM must meet within 90 days. The Board will discuss these requirements at the next meeting.

The next meeting of the UACIM Board of Directors will be at 11:30 a.m. on the 25th of January, 1996. The Board will continue to meet the fourth Thursday of each month.

UAC Insurance Mutual



UAC Insurance Mutual



PROPOSAL FOR USE OF DEFENSE COUNSEL PRIOR TO NOTICE OF CLAIM

UACIM recognizes that controlling losses in the member counties is most effectively achieved by recognizing potential loss situations and working proactively to prevent or minimize those situations. Part of a proactive approach to loss control includes providing the best possible advice to member counties at the earliest possible time. To that end, UACIM shall implement the following program to provide counsel from specified defense counsel on a limited basis, to advise member counties through UACIM on matters of substantial potential impact to the members and the mutual, such as wrongful termination, sexual harassment, employee discipline, etc.

The following program shall become effective on October 20, 1995:

- I. The UACIM director, with the assistance of the UACIM litigation Management Committee, shall compile a list of defense attorneys specializing in areas of the law where UACIM is experiencing, or according to the broker's projections may experience substantial losses.
- II. A description of the program shall be sent to each member county attorney and member county commission/counsel/ county executive and to each defense attorney expected to participate in the program.
- III. UACIM shall develop a request form for ease of implementation and use of the program.
- IV. \$10,000 shall be included in the UACIM budget to fund this program
- V. The director shall report each consultation or case referral to the Litigation Management Committee.
- VI. The program shall operate within the following parameters:
 - A. Each request for a consultation or case referral must be requested by the member county attorneys office, or by the county commission/council/county executive after consultation with the county attorney 's office. Each such request shall be made only after the member county attorney has reviewed the matter that is the subject for a request for consultation or case referral and has approved the request.
 - B. For each approved consultation or case referral, both the county and the defense attorney must receive authorization in writing from the UACIM Director, which shall include:
 - 1- name of the county
 - 2- name of the person requesting the consultation or case referral,
 - 3- name of the defense attorney to be consulted with,
 - 4- amount of time authorized by UACIM director, and
 - 5- scope or type of service approved to be provided (i.e. number of hours or amount etc.)

- C. All correspondence shall be through the UACIM Director;
- D. The County Attorney's Office shall receive copies of correspondence;
- E. The defense attorney who is consulted with in a pre-notice of claim capacity shall not be the attorney for the member county, but rather shall represent the UACIM in an advisory capacity. All advice provided by the defense attorney shall be passed to the member county through the UACIM;
- F. If the approved consultation or case referral requires an additional number of hours or dollar amount beyond those approved by the UACIM Director, the member county will be required to submit an additional request for a consultation or case referral. A member county that exceeds the approved expenditure of time or approved dollar amount shall be required to reimburse the UACIM for any such excess charges.

NOTE: This program is intended to assist, not replace or in any way circumvent the local county attorney's office. Again the goal of the program is to provide a valuable service to mutual members which will allow action based on current legal standards.

